

LEGISLATURE OF NEBRASKA  
NINETY-EIGHTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1020**

Introduced by Landis, 46

Read first time January 12, 2004

Committee: Revenue

A BILL

- 1 FOR AN ACT relating to revenue and taxation; to amend sections
- 2 77-2701 and 77-2734.04, Reissue Revised Statutes of
- 3 Nebraska; to impose a minimum corporate tax; to harmonize
- 4 provisions; and to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 77-2701, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           77-2701. Sections 77-2701 to 77-27,135.01 and 77-27,222  
4 and section 3 of this act shall be known and may be cited as the  
5 Nebraska Revenue Act of 1967.

6           Sec. 2. Section 77-2734.04, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8           77-2734.04. As used in sections 77-2734.01 to 77-2734.15  
9 and section 3 of this act, unless the context otherwise requires:

10           (1) Commercial domicile shall mean the principal place  
11 from which the trade or business of the taxpayer is directed or  
12 managed;

13           (2) Compensation shall mean wages, salaries, commissions,  
14 and any other form of remuneration paid to employees for personal  
15 services;

16           (3) Corporate taxpayer shall mean any corporation that is  
17 not a part of a unitary business or the part of a unitary business,  
18 whether it is one or more corporations, that is doing business in  
19 this state. Corporate taxpayer shall not include any corporation  
20 that has a valid election under subchapter S of the Internal  
21 Revenue Code or any financial institution as defined in section  
22 77-3801;

23           (4) Corporation shall mean all corporations and all other  
24 entities that are taxed as corporations under the Internal Revenue  
25 Code;

26           (5) Doing business in this state shall mean the exercise  
27 of the corporation's franchise in this state or the conduct of  
28 operations in this state that exceed the limitations provided in 15

1 U.S.C. 381 on a state imposing an income tax;

2 (6) Federal taxable income shall mean the corporate  
3 taxpayer's federal taxable income as reported to the Internal  
4 Revenue Service or as subsequently changed or amended. Except as  
5 provided in subsection (5) or (6) of section 77-2716, no adjustment  
6 shall be allowed for a change from any election made or the method  
7 used in computing federal taxable income. An election to file a  
8 federal consolidated return shall not require the inclusion in any  
9 unitary group of a corporation that is not a part of the unitary  
10 business;

11 (7) Sales shall mean all gross receipts of the taxpayer;

12 (8) Single economic unit shall mean a business in which  
13 there is a sharing or exchange of value between the parts of the  
14 unit. A sharing or exchange of value occurs when the parts of the  
15 business are linked by (a) common management or (b) common  
16 operational resources that produce material (i) economies of scale,  
17 (ii) transfers of value, or (iii) flow of goods, capital, or  
18 services between the parts of the unit.

19 (A) For the purposes of this subdivision, common  
20 management shall include, but not be limited to, (I) a centralized  
21 executive force or (II) review or approval authority over long-term  
22 operations with or without the exercise of control over the  
23 day-to-day operations.

24 (B) For the purposes of this subdivision, common  
25 operational resources shall include, but not be limited to,  
26 centralization of any of the following: Accounting, advertising,  
27 engineering, financing, insurance, legal, personnel, pension or  
28 benefit plans, purchasing, research and development, selling, or

1 union relations;

2 (9) State shall mean any state of the United States, the  
3 District of Columbia, the Commonwealth of Puerto Rico, any  
4 territory or possession of the United States, and any foreign  
5 country or political subdivision thereof;

6 (10) Subject to the Internal Revenue Code shall mean a  
7 corporation that meets the requirements of section 243 of the  
8 Internal Revenue Code in order for its distributions to qualify for  
9 the dividends-received deduction;

10 (11) Taxable income shall mean federal taxable income as  
11 adjusted and, if appropriate, as apportioned;

12 (12) Taxable year shall mean the period the corporate  
13 taxpayer used on its federal income tax return;

14 (13) Unitary business shall mean a business that is  
15 conducted as a single economic unit by one or more corporations  
16 with common ownership and shall include all activities in different  
17 lines of business that contribute to the single economic unit.

18 For the purposes of this subdivision, common ownership  
19 shall mean one or more corporations owning fifty percent or more of  
20 another corporation; and

21 (14) Unitary group shall mean the group of corporations  
22 that are conducting a unitary business.

23 Sec. 3. (1) (a) For all tax years beginning or deemed to  
24 begin on or after January 1, 2004, under the Internal Revenue Code  
25 of 1986, as amended, a minimum corporate tax is hereby imposed for  
26 each taxable year on the taxable income of every corporate taxpayer  
27 that is doing business in this state and that has taxable income  
28 apportioned or allocated to this state as provided in this section.

1           (b) The rate of tax shall be 0.0 percent on taxable  
2 income from \$0 to \$999,999; 0.4 percent on taxable income from  
3 \$1,000,000 to \$5,000,000; and 0.8 percent on taxable income in  
4 excess of \$5,000,000.

5           (c) For corporate taxpayers with a fiscal year that does  
6 not coincide with the calendar year, the individual rate used for  
7 this section shall be the rate in effect on the first day, or the  
8 day deemed to be the first day, of the taxable year.

9           (2) For a corporate taxpayer that is subject to tax in  
10 another state, its taxable income shall be the portion of the  
11 taxpayer's federal taxable income, as adjusted, that is determined  
12 to be connected with the taxpayer's operations in this state  
13 pursuant to sections 77-2734.05 to 77-2734.15.

14           (3) For purposes of the tax imposed in this section, a  
15 unitary business having income from business activity that is  
16 taxable both within and without this state shall determine its  
17 taxable income by multiplying its federal taxable income, as  
18 adjusted, by a fraction, which is the average of the property  
19 factor plus the payroll factor plus the sales factor. If a unitary  
20 business does not have any property, payroll, or sales anywhere,  
21 then the average shall be the average of the remaining factors. In  
22 the computation of the factors only the part of a unitary group  
23 that is subject to the Internal Revenue Code of 1986, as amended,  
24 shall be included except as provided in section 77-2734.09.

25           (4) For purposes of this section, the income of a unitary  
26 business shall be apportioned as provided in section 77-2734.06 and  
27 may be adjusted as provided in sections 77-2734.08 to 77-2734.10.  
28 The federal taxable income of such business shall not be adjusted

1 as provided in section 77-2734.07.

2 (5) There shall be allowed as a nonrefundable credit  
3 against the tax provided in this section the total amount of  
4 Nebraska corporate income tax due after nonrefundable credits,  
5 Nebraska financial institution tax due after nonrefundable credits,  
6 or Nebraska premium tax due under section 77-908 or 81-523  
7 including any offset allowed under section 44-4233, however no  
8 credits against the payment of any tax shall be allowed as a credit  
9 against the tax imposed by this section.

10 (6) For purposes of administering the tax imposed by this  
11 section, statutory provisions relating to the income tax shall  
12 apply, including provisions relating to returns, due dates,  
13 interest, and penalties. The Department of Revenue may adopt and  
14 promulgate rules and regulations regarding the administration and  
15 enforcement of the tax imposed by this section.

16 Sec. 4. Original sections 77-2701 and 77-2734.04,  
17 Reissue Revised Statutes of Nebraska, are repealed.